



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	03/03/99	Bill No:	AB 1637
Tax:	Sales and Use	Author:	Assembly Revenue and Taxation Committee
Board Position:	Support – Board-sponsored	Related Bills:	

BILL SUMMARY:

This bill would provide that nonprofit youth organizations, as described, shall be regarded as consumers, rather than retailers, of *any* tangible personal property they sell on an irregular or intermittent basis, provided the profits from those sales are used exclusively in furtherance of the organization, except as specified.

ANALYSIS:

Current Law:

Under current law, sales of tangible personal property by nonprofit organizations are generally subject to tax to the same extent as sales by any other retailer. However, existing law provides a different method of taxation for, among other organizations, nonprofit youth organizations and youth groups sponsored by or affiliated with a qualified educational institution, as defined. Section 6361 of the Sales and Use Tax Law currently provides that these youth groups are the consumers, rather than retailers, of food, nonalcoholic beverages and other tangible personal property made or produced by the members of the organization (e.g., hand-crafted items). To qualify for this method of taxation, the sales can only be made on an irregular or intermittent basis, and the profits from those sales must be used exclusively in furtherance of the purposes of the organization. In addition, in order for nonprofit youth groups that aren't specifically named within the statute to qualify for this method of taxation, they must also meet the following conditions:

- The organization must qualify for tax-exempt status under Section 501(c) of the Internal Revenue Code.
- The organization's primary purpose must be to provide a supervised program of competitive sports for youth, or to promote good citizenship in youth.
- The organization may not discriminate on the basis of race, sex, nationality, or religion.

As consumers, these youth groups are not required to report tax on their sales of food, nonalcoholic beverages or hand-crafted items, but rather, are required to pay tax on

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their cost of the items (since food products are already exempt from tax, no tax would apply to purchases of food by these organizations).

Current law also provides this consumer-status method of taxation to, among other organizations, nonprofit parent teachers associations for *any* tangible personal property they sell.

Proposed Law:

This bill would amend Section 6361 of the Sales and Use Tax Law to provide that nonprofit youth organizations, as described within that section, shall be regarded as consumers, rather than retailers, of *any* tangible personal property they sell either on their own account or as an agent for others, provided the profits from those sales are used exclusively in furtherance of the organization and that those sales are made on an irregular or intermittent basis.

The bill would become operative on the first day of the calendar quarter commencing more than 90 days after the bill is enacted.

Background:

A similar measure, SB 639 (Burton) was considered during the 1997-98 Legislative Session. That measure, which was also sponsored by the Board, was held in the Assembly Appropriations Committee.

COMMENTS:

1. **Sponsor and purpose of the bill.** This measure is sponsored by the Board of Equalization in order to address an inconsistency in the California sales tax laws related to the taxation of fund-raising items sold by school-sponsored youth groups and the taxation of items sold by nonprofit parent-teacher organizations (PTAs). Presently, sales of merchandise through school fund-raisers conducted by nonprofit parent-teacher associations are taxed differently than merchandise sold through school fund-raisers by school-sponsored youth groups. Sales of any fund-raising item (other than food, nonalcoholic beverages, or hand-crafted items) by a school-sponsored youth group are generally subject to sales tax and the youth groups are required to collect the tax from their customers based on the retail selling price. On the other hand, sales of *any* fund-raising items by nonprofit parent-teacher associations are exempt from tax, and the PTAs are only required to pay tax on their cost of the merchandise (the wholesale amount).

2. **Example of the inconsistency.** An example of this inconsistency would be a band group that wanted to raise money to support a band program. The group can operate either under the umbrella of the school's PTA or directly under the authority of the school. Under current law, the group operating under the control of the PTA is considered the consumer of products it purchases to raise funds. That group is only

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required to pay tax on its purchase price of the products. It then obtains “donations” from its customers in exchange for the product, which are not subject to California sales tax. In contrast, when a school-sponsored youth group not affiliated with the PTA makes sales of products, it is required under current law to calculate the applicable sales tax on its sales price of the merchandise, collect it from the customers, and either remit it to the Board (in cases where the youth group is buying and selling on its own account) or to their supplier (in cases where the youth group is considered an agent of that supplier). AB 1637 would eliminate this inconsistency by treating sales of fund-raising merchandise by school-sponsored youth groups the same as sales of fund-raising merchandise by PTAs.

3. **Youth groups have failed to collect the tax.** The Board has recently become aware that most suppliers selling fundraising items to school youth organizations have failed to inform the youth groups that they should be collecting sales tax from customers on their merchandise sales. Consequently, there have been hundreds of school groups retailing products in small fund-raising sales throughout the state that have failed to collect the tax. The Board recognizes, however, that placing this sales tax collection responsibility on the youth groups is a burden that should be eliminated. AB 1637 would eliminate that burden.
4. **Most youth group fund-raising activities are now carried on apart from the PTA.** In the past, most school fundraising was conducted under the auspices of the PTA. Currently, however, more and more fundraising is carried on apart from the PTA by school clubs, classes, music groups, athletic teams and more, as there is now a greater need for funding to support school programs. Therefore, much of the youth group fundraising conducted today is not covered under the law that eliminates the sales tax collection responsibility. The Board believes it is equitable to provide a uniform and consistent method of taxation to youth group fundraising, whether it be through the auspices of the PTA or other school-sponsored youth group.

COST ESTIMATE:

Some costs would be incurred in notifying affected retailers and changing affected Board regulations. These costs would be absorbable.

REVENUE ESTIMATE:

Since no tax is currently being collected on the difference between the wholesale price and the retail price, this bill would not result in the loss of any current sales and use tax revenue.

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